CROWELL & MORING
1001 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2595
(202) 624-2500
CABLE: CROMOR
FACSIMILE (RAPICOM): 202-628-5116
W. U. I. (INTERNATIONAL) 64344
W. U. (DOMESTIC) 89-2448

SUITE 1200
2010 MAIN STREET
IRVINE, CALIFORNIA 92714-7217
(714) 263-8400
FACSIMILE (714) 263-8414

1 SERJEANTS' INN
LONDON EC4Y 1LL
44-71-936-3036
FACSIMILE 44-71-936-3035

November 10, 1993

BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW Room 222
Washington, DC 20554

RE: PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Loral Qualcomm Satellite Services, Inc. are an original and four copies of its "Comments" in the above-referenced rulemaking proceeding.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,

William D. Wallace

Enclosure

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of	)	PP Docket No. 93-253
Section 309(j) of the	)	
Communications Act	)	
Competitive Bidding	)	

COMMENTS OF
LORAL QUALCOMM SATELLITE SERVICES, INC.

Loral Qualcomm Satellite Services, Inc. ("LQSS") hereby submits its comments on the Commission's Notice of Proposed Rule Making, FCC 93-455 (released October 12, 1993) ("Notice") to establish rules for award of certain radiofrequency licenses by auction. LQSS is an applicant for an authorization to construct "Globalstar," a low-earth orbit satellite communications system[1/] using the MSS/RDSS frequencies.[2/]

In the Notice (at ¶¶ 154-55), the Commission sought comment on what method for selection should be applied to the MSS/RDSS frequencies pursuant to Section 6002 of the Omnibus Budget

---

1/ LQSS' Globalstar Application was filed on June 3, 1991 (File Nos. 19-DSS-P-91(48) and CSS-91-014), and accepted for filing on October 24, 1991, Public Notice, 6 FCC Rcd 6002 (1991).

2/ Allocation of the MSS/RDSS frequencies (1610-1626.5 MHz and 2483.5-2500 MHz) to the Mobile-Satellite Service is currently pending in ET Docket No. 92-28. Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-Geostationary Satellites, 7 FCC Rcd 6414 (1992), and rules with respect to this service are under consideration in CC Docket No. 92-166. See Establishment of an Advisory Committee to Negotiate Proposed Regulations, 7 FCC Rcd 5241 (1992).

Reconciliation Act of 1993, Pub. L. 103-66, Title VI, 107 Stat. 312, 387-97 (Aug. 10, 1993) ("the Act"), codified at 47 U.S.C. § 309(j). As discussed below, the plain language of the Act, its legislative history, and the public interest all counsel against use of auctions or lotteries for licensing MSS/RDSS systems in these frequencies.[3/]

I. AN AUCTION IS UNNECESSARY FOR MSS/RDSS BECAUSE NO FINDING OF MUTUAL EXCLUSIVITY BETWEEN APPLICATIONS IS REQUIRED.

Nearly two years ago, the Commission recognized that "the public interest is best served by multiple MSS LEO operators." Amendment of Section 2.106 of the Commission's Rules, 7 FCC Rcd at 6417. During the intervening time period, the Commission and the applicants have devoted much time, energy and thought to how to create rules or other methods to meet this goal.

Notwithstanding past controversy,[4/] the nongeostationary applicants for the MSS/RDSS service have concluded that all qualified applicants may be assigned licenses to operate their respective MSS/RDSS systems within the frequencies proposed for allocation to this service. See Jointly Filed Comments of Motorola Satellite Communications, Inc. and Loral Qualcomm Satellite Services, Inc., at 9-10 (filed October 7, 1993); Joint

---

3/ Similarly, the Commission should not attempt to license by auction or lottery either feederlink frequencies for MSS/RDSS systems or user frequencies for second generation systems. Each MSS/RDSS system should be authorized to use appropriate feederlinks in conjunction with userlinks. Userlink frequencies for second generation use should be assigned to operational systems.

4/ See Report of the MSS Above 1 GHz Negotiated Rulemaking Committee (April 6, 1993).

Spectrum Sharing Proposal of Constellation Communications, Inc., Ellipsat Corporation, and TRW, Inc., at 8-9 (filed October 8, 1993). While the applicants' suggested spectrum-sharing plans differ, both plans provide for issuance of licenses to all LEO systems.[5/]

As these proposed spectrum-sharing plans indicate, there is no need to find mutual exclusivity among the pending LEO MSS applicants.[6/] As the Commission points out in the Notice, "Section 309(j) only permits auctions if mutual exclusivity exists among applications that have been accepted for filing." Notice, ¶ 22; see 47 U.S.C. § 309(j)(1) (emphasis supplied). If the Commission adopts either spectrum-sharing approach, or an alternative approach (based on the principle recommended by the applicants that all qualified systems be assigned spectrum), then an essential statutory requirement (mutual exclusivity) for conducting an auction would not be met.[7/] "[I]f mutual

---

5/ Both proposed spectrum-sharing plans request the Commission to restrict licenses in these frequencies to low and middle earth orbit systems. See Jointly Filed Comments, at 8-9; Joint Spectrum Sharing Proposal, at 16 n.9.

6/ Furthermore, eliminating mutual exclusivity advances the Commission's goals of licensing multiple systems and enhancing competition. See Radio-Determination Satellite Service, 60 RR 2d 298, 301 (1986).

7/ In addition, because the rules for the MSS/RDSS service have not yet been adopted, it is premature to decide whether competitive bidding can be used to assign licenses to the pending applicants. The Act requires that the Commission establish auctions, if at all, "consistent with the public interest, convenience, and necessity, the purposes this Act, and the characteristics of the proposed service." 47 U.S.C. § 309(j)(4)(C). The "characteristics" of this service have not been determined. Indeed, it is mere speculation at this time as to what the applicants would be bidding for. Accordingly, under the Act, it is not possible for the

exclusivity among . . . applications does not exist, a license is not subject to competitive bidding." Notice, ¶ 22 (footnote omitted).

Avoidance of the need to find mutual exclusivity by use of a negotiated or engineering solution was, in fact, recommended by Congress as preferable to an auction (or lottery) for these frequencies. The Act states that grant of authority to assign licenses by competitive bidding does not relieve the Commission of its public interest obligation to seek to avoid mutual exclusivity in licensing proceedings.[8/] 47 U.S.C. § 309(j)(6)(E). In this regard, the House Report noted:

> The ongoing MSS (or "Big LEO") proceeding is a case in point. The FCC has and currently uses certain tools to avoid mutually exclusive licensing situations, such as spectrum sharing arrangements and the creation of specific threshold qualifications, including service criteria.

H.R. Rep. No. 103-111, 103d Cong., 1st Sess., at 258-59 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 585-86. Congress has thus indicated that competitive bidding should not be used for assignment of MSS/RDSS licenses to use spectrum above 1 GHz if a method to avoid mutual exclusivity is available to the Commission (and as noted above, several such methods are available).

Commission to decide to apply competitive bidding to MSS/RDSS until rules governing the service have been adopted.

8/ "Nothing in this subsection, or in the use of competitive bidding, shall . . . be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings." 47 U.S.C. § 309(j)(6)(E).

Not only would it be contrary to the Act to require the MSS/RDSS applicants to prepare for a spectrum auction, but also it would destroy nearly three years' worth of negotiation and preparation by the applicants and Commission Staff for licensing multiple LEO systems.[9/] For all these reasons, there is no need or public interest benefit to find mutual exclusivity among applicants and no need to use an auction (or lottery) for the award of MSS/RDSS licenses.

II. THE PUBLIC INTEREST WOULD NOT BE SERVED BY AUCTION OF MSS/RDSS LICENSES FOR INTERNATIONAL MSS.

As Chairman Quello recently recognized, LEO satellite systems provide "inherently international services and therefore raise issues of international cooperation."[10/] LQSS and the other proposed systems intend to provide global MSS/RDSS services to handheld transceivers in a worldwide market. In order to provide this new service, each United States licensee must also receive authorizations to operate in foreign nations. Without both domestic and foreign licenses, such proposed "global" MSS systems

---

9/ Cf. Letter of Chairman James H. Quello to Members of Congress (June 23, 1993) (in reference to application proceedings already in progress: "[A] sudden mandatory change to competitive bidding from existing licensing procedures could impede the development and, ultimately, the viability of these services"). There is also a question whether application of auction procedures adopted in 1994 to LQSS's application, which was accepted for filing in 1991, would be impermissible as a retroactive application of Commission rules. See Bowen v. Georgetown University Hosp., 488 U.S. 204 (1988).

10/ Speech before INTELEVENT 93, "Flexible Regulatory Policies in a Competitive Environment" (October 4, 1993).

would be unable to bring to the public the technological and service benefits of the new satellite communications systems.

While the bands at 1610-1626.5 MHz and 2483.5-2500 MHz are allocated internationally for MSS and RDSS services,[11/] each nation may conduct its own allocation and licensing proceedings. Spectrum auctions for domestic licenses could trigger use of auctions for MSS/RDSS licenses in foreign countries, or suggest "licensing fees" based on the "value" of the spectrum established in the United States. As Chairman Quello warned Congress prior to enactment of the Act:

> [R]equiring use of competitive bidding for low earth orbiting satellite system licenses in this country might subject those licensees to exorbitant payment requirements for access to spectrum in other countries. I am particularly concerned that some foreign governments opposed to the use of our international telecommunications accounting and auditing standards could use our competitive bidding requirement as a justification for retaliatory measures.

Letter from Chairman James H. Quello, at 2 (June 23, 1993).

Further, where international coordination is required, the "value" of the various segments of this spectrum cannot be determined until the international coordination process has taken place. Cf., e.g., Joint Spectrum Sharing Proposal, at 11 (discussing the consequences for planning spectrum sharing in 1610-1616 MHz band used by GLONASS). Moreover, in the coordination procedure, the United States may face objections from foreign countries for "selling" the rights to use spectrum to specific systems without coordinating first.

11/ See Addendum & Corrigendum to the Final Acts of the World Administrative Radio Conference, Malaga-Torremolinos (1992).

These examples demonstrate that the international features of LEO systems make an equitable auction difficult to design, jeopardize the integrity of any auction's results, potentially increase operating costs to bidders, and raise serious international concerns. To avoid these problems and resulting delay in delivery of service, and to ensure that the public interest is served, an auction should not be used to license MSS/RDSS systems.

III. THE CRITERIA IN THE ACT DISFAVOR AUCTIONS FOR MSS/RDSS.

The Act requires the Commission to determine that use of competitive bidding will promote the objectives of the Act. See Notice, ¶ 12. These objectives include:

> (A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;
>
> (B) promoting economic opportunity and competition and ensure that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;
>
> (C) recovery for the public of a portion of the value of the public spectrum made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and,
>
> (D) efficient and intensive use of the electromagnetic spectrum.

47 U.S.C. § 309(j)(3).

There is no analysis of these factors in sections of the Notice applicable to MSS/RDSS to support a conclusion that MSS/RDSS licenses should be awarded by spectrum auction. Moreover, it

is clear that these objectives would not be met by use of competitive bidding for this service.

First, as the Commission recognized in the allocation rulemaking for MSS/RDSS, nongeostationary satellite systems serve the public interest by providing new and enhanced MSS services on a global basis to handheld and other mobile devices. See Amendment of Section 2.106 of the Commission's Rules, 7 FCC Rcd at 6414. Attempting to establish rules for auction of the MSS/RDSS spectrum would inject further delay into delivery of these new services to the public, and would be inconsistent with the Act's requirement that an auction be used to promote "the development and rapid deployment of new technologies, products and services for the benefit of the public."[12/]

Second, the Commission would not promote "economic opportunity and competition" by awarding MSS/RDSS licenses by auction. Unlike spectrum allocated for the Commission's new "Personal Communications Service,"[13/] there is only one block of frequencies currently proposed for allocation to MSS/RDSS. But this block can accommodate multiple operators. Awarding licenses in this service by competitive bidding, a preclusive format, would deter competitive entry rather than promote it. The Commission

---

12/ The Notice lists MSS Above 1 GHz under the category "common carrier radio services." Notice, at 51. However, LQSS sought non-common carrier status. In these circumstances, there is a question as to the applicability of the "principal use requirement" of the Act. See Notice, at ¶¶ 30-33.

13/ See Second Report and Order, FCC 93-451 (released October 22, 1993).

should assign the MSS/RDSS spectrum without an auction to multiple applicants to provide "economic opportunity and competition."

Third, it is likely that the value of the spectrum to the public would be unnecessarily inflated if competitive bidding were used to award MSS/RDSS licenses because there is no need to consider applicants mutually exclusive and therefore no reason to raise the cost of primary service to the public by auction. These unnecessary negative effects of an auction on costs of service to the public could be exacerbated, as discussed above, because each operator might be required to make a "bid" to multiple other nations, which would substantially increase the cost of operation for the pending applicants.[14/] These costs would have to be passed on to the public, increasing the cost of service and negating the statutory goal of "recovery for the public of a portion of the value of the public spectrum."

Fourth, the most "efficient and intensive use" of this spectrum is by allowing multiple entry. The applicants have suggested a number of methods for assigning spectrum which would allow award of multiple licenses and coexistence in the same spectrum. See Jointly Filed Comments, supra; Joint Spectrum Sharing Proposal, supra. "Competitive" bidding would require rejecting these proposals and awarding exclusive licenses to one or only a few systems, thereby reducing "efficient and intensive use" of the spectrum.

14/ Moreover, U.S. licensees could potentially be placed at a further competitive disadvantage if these countries used "licensing fees" or auctions to discriminate in favor of national systems or private systems based in such countries.

IV. CONCLUSION.

For the reasons outlined above,[15/] LQSS recommends that the Commission not use competitive bidding to award authorizations for use of the MSS/RDSS spectrum at 1610-1626.5 and 2483.5-2500 MHz, feederlink frequencies associated with MSS/RDSS systems, or any spectrum reserved for future use of MSS/RDSS systems.

Respectfully submitted,

LORAL QUALCOMM SATELLITE SERVICES, INC.

By: Linda K. Smith (wdw)

Linda K. Smith
William D. Wallace

CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 624-2500

Leslie A. Taylor (wdw)

Leslie A. Taylor

LESLIE TAYLOR ASSOCIATES
6800 Carlynn Court
Bethesda, Maryland 20817-4302
(301) 229-9341

Its Attorneys

Date: November 10, 1993

15/ To conserve Commission time, LQSS has addressed only the most significant reasons for not using an auction or lottery for MSS/RDSS. LQSS has also not discussed such matters as whether competitive bidding should apply to initial licensing only (see Notice at ¶ 22) because it does not believe competitive bidding should apply to MSS/RDSS at all. LQSS, of course, reserves the right to amplify these comments.

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 10th day of November 1993, caused copies of the foregoing "Comments of Loral Qualcomm Satellite Services, Inc." to be served by hand-delivery (as indicated with *) or by U.S. mail, postage-prepaid, to the following:

*Chairman James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Ervin S. Duggan
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Andrew C. Barrett
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

*James R. Keegan
Chief, Domestic Facilities Division
Federal Communications Commission
2025 M Street, N.W., Room 6010
Washington, D.C. 20036

*Cecily C. Holliday
Satellite Radio Branch
Federal Communications Commission
2025 M Street, N.W.
Room 6010
Washington, D.C. 20036

*Fern J. Jarmulnek
Federal Communications Commission
2025 M Street, N.W.
Room 6324
Washington, D.C. 20554

*Kathleen B. Levitz
Acting Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*Gerald P. Vaughan
Deputy Bureau Chief (Operations)
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*Wendell R. Harris
Assistant Bureau Chief
Common Carrier Bureau
Federal Communications Commission
Room 534
1919 M Street, N.W.
Washington, D.C. 20554

*Thomas Tycz
Deputy Chief
Domestic Facilities Division
Common Carrier Bureau
Federal Communications Commission
Room 6010
2025 M Street, N.W.
Washington, D.C. 20554

Jill Abeshouse Stern
Shaw, Pittman, Potts &
Trowbridge
2300 N Street, N.W.
Washington, D.C. 20036

Robert A. Mazer
Albert Shuldiner
Nixon, Hargrave, Devans & Doyle
One Thomas Circle
Suite 800
Washington, D.C. 20005

Norman P. Leventhal
Raul R. Rodriguez
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

Bruce Jacobs
Fisher, Wayland Cooper &
Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037

James G. Ennis
Barry Lambergman
Fletcher Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, VA 22209

Philip L. Malet
Steptoe & Johnson
1330 Connecticut Avenue N.W.
Washington, D.C. 20036

Victor J. Toth
Law Offices of Victor J. Toth
2719 Soapstone Dr.
Reston, VA 22091

Michael D. Kennedy
Director, Regulatory Relations
Motorola Inc.
1350 I Street, N.W.
Suite #400
Washington, D.C. 20005

Lon C. Levin
American Mobile Satellite Corp.
10802 Parkridge Boulevard
Reston, VA 22091

William D. Wallace